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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 1321

C. A. POTEET, R. O. JACKSON, HARRY WRIGHT, STEVE MITCHELL and CLAUDE McGLADE,
Petitioners,

vs.

STEVE ROGERS,
Respondent.

PETITIONERS' REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

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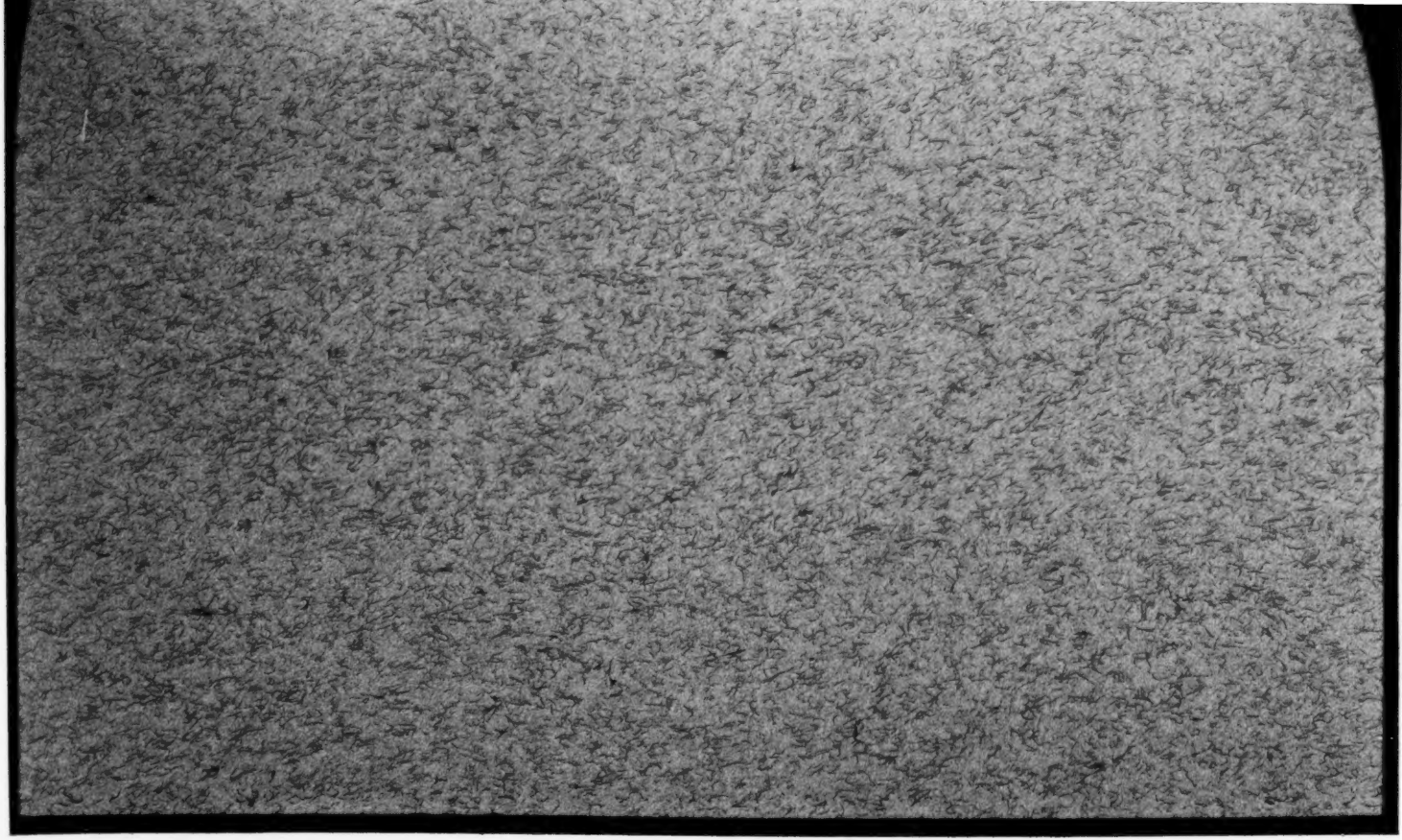

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I and II

Respondent states (page 9) that Missouri laws prohibit unlawful agreements and concerted action resulting in the destruction of property rights in contracts and in property, and the coercion of citizens to join and help support any organization which they do not wish to join and help support.

The only law of Missouri that is involved is Section 8301 R. S. Mo., 1939, which only prohibits persons entering into any agreement or combination with others in restraint of trade or competition in the transportation, purchase or sale

of any commodity. There is no statute expressly prohibiting the acts mentioned by respondent. There is no dispute as to the facts in this case and the only question involved is whether or not the injunction issued against petitioners and upheld by the Missouri Supreme Court is justified upon the basis of the facts shown in evidence as constituting a violation of Section 8301, in view of the constitutional rights of petitioners, guaranteed by the 1st and 14th Amendments. Respondent says the evidence shows a conspiracy to obtain a definite objective by unlawful means. He assumes the means to be unlawful. The petitioners contend the means were not unlawful and that the injunction exceeds the permissible boundaries granted to the State of Missouri under the facts shown by the evidence, considering the limiting provisions of the 1st and 14th Amendments to the Constitution. Respondent claims the criminal intention of petitioners was to destroy property rights in order to make respondent a member of the union. Petitioners claim that there is no evidence of intention to destroy property rights or property or contracts, that the primary motives of petitioners merely show a good faith effort on the part of members of a *bona fide* labor organization in a *bona fide* labor controversy, to benefit their own members and other persons working in the craft, with regard to working conditions, the petitioners and other members of the union having no possible interest in the buying or selling of milk, in the price charged therefor by the producer, paid by the purchaser, or the price charged for hauling the same. The only matter involved is the furnishing of labor which cannot be a product or commodity subject to a combination in restraint of trade or competition under the Missouri statutes. Here no petitioner has any contract to buy or sell milk or any control over the price thereof. The controversy is purely over working conditions. Notwithstanding these facts, clearly shown by the

Missouri Supreme Court's Opinion, these petitioners, under the injunction against them, may not exercise their right of free speech to say with whom they will work; they may not exercise free speech to vote to strike for any reason, because there would be then no one to receive respondent's milk; they may not agree to peacefully picket the Borden Dairy because then, even though respondent's milk were received, there would be no other employees to process it or sell it after it was processed; they may not by negotiating in free, collective bargaining, attempt to procure a contract favorable to all persons bringing milk to the dairy, because if they did, that would interfere with the delivery of respondent's milk; they may not ask to have their own wages increased, and if such increase be refused, they could not strike because the injunction says respondent's milk must be processed. Under this injunction petitioners and union members may not exercise their individual rights of free speech or assembly if such activities in any way interfere with the receipt, unloading and processing of the milk held by respondent.

These examples could be continued indefinitely and make it clearly obvious that petitioners, in operating and maintaining the union, may not carry on the necessary integrated and correlated actions of the union members for their own benefit. The continuation of the receipt, unloading and processing of respondent's milk is a definite condition and limitation upon the rights of petitioners in carrying on their union activities. This is true because under the terms of the injunction the threat of the restraining order, backed by the power of contempt and the consequent arrest and imprisonment therefor, must hang over every peaceful action and labor activity carried on by these petitioners, which constitutes a condition and a whittling down of all the rights of free speech and assembly guaranteed by the 1st and 14th Amendments. These rights are fundamental

human liberties which cannot be abridged in the absence of grave and immediate danger to interests which the state may lawfully protect, and there is no such showing of grave and immediate danger to such interests. Even the case of *Lohse Patent Door Company* v. *Fuelle,* 215 Mo. 421, 114 S. W. 997, which the Missouri Supreme Court states that it follows, holds, 114 S. W. l. c. 1004: "A combination between persons merely to regulate their own conduct and affairs is allowable and a lawful combination, although others may be indirectly affected thereby," and in addition that case only and solely holds that the petition therein stated a cause of action.

Respondent evidently bases his argument on the opinion of this Court in *Carpenters & Joiners Union* v. *Ritters Cafe et al.,* 315 U. S. 722, 62 S. C. R. 807. That case merely held that the State of Texas, under its anti-trust law and as a part of the public policy of the state, would be permitted to prevent picketing of a separate business having no *nexus* with the actual labor controversy involved. This Court there held that the 14th Amendment did not prevent Texas from "drawing this line in confining the area of unrestricted industrial warfare." The possibility of that question entering into the case was expressly negatived by petitioners, in stating the question presented to this Court (Petition, pages 11, 12, 16). All the enjoined acts of petitioners here were done in the industrial area immediately involved.

Several other authorities of this Court, mainly the *Associated Press* case, 326 U. S. 1, 65 S. C. R. 1416, and the *American Medical Association* case, 317 U. S. 519, 63 S. C. R. 326, are urged upon this Court as authorities for the proposition that either the organizational campaign of petitioners was unlawful or that the means by which it was sought to be effected was unlawful. Those cases can have no possible bearing in view of the facts here, being as they

were cases in which A. P. and A. M. A. were attempting to put competing persons entirely out of business in order to perpetuate their own methods of conducting their own business. Here no petitioner or union member is attempting to put respondent out of business. He is merely one out of 96 persons engaged in hauling milk to the Kansas City market from numerous producers. The supply of milk for Kansas City does not depend upon any single milk hauler but upon the many farms in the milk shed amply supplied with herds of livestock producing milk to satisfy the ordinances of the City and the laws of the State. Whether or not this respondent continues to haul milk to Kansas City cannot in the least degree destroy competition in the production, transportation or sale of milk, or have the slightest effect on the prices, or result in any restraint of trade. Even if respondent should be driven out of business, the production and transportation facilities for milk and milk products could not possibly be sufficiently diminished or impaired so as to affect the market demand for milk. Here in the combination complained of, is only the cooperation of persons wholly within the same craft, united in a local union for self-protection only. No outsider is a party to whatever combination existed and no purpose was to be subserved which was to promote the interests of the members of this union. These facts are apparent if this Court looks into the evidence. In the latest expression of this Court in a case involving the rights guaranteed by the 1st and 14th Amendments (*Craig et al.* v. *Harney,* 67 S. C. R. 1249) this Court said, l. c. 1253:

> "In a case where it is asserted that a person has been deprived by a State court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made."

This is a like case.

III

Respondent says this Court has no jurisdiction because no second motion for rehearing was filed, after the second hearing and opinion after the transfer to the court *En Banc*. The cases cited to sustain this were cases where this Court refused jurisdiction after application for certiorari from a divisional opinion, and not that of the court. The opinion here is an adverse opinion of the highest court in the State of Missouri. Rule 1.19, Page 14 of the Missouri Supreme Court Rules, 1945 revision, says nothing to make mandatory the filing of motion for a rehearing as a condition precedent to appeal or application for certiorari to this Court. The only controlling provision is the Judicial Code, Section 237 (8 F. C. A. Title 28, Paragraph 344 (b)), which limits review unless a final decree has been rendered by the highest court of the state in which a decision could be had. Another motion for a rehearing after the opinion of the court *En Banc*, when there had been a previous motion for a rehearing before the division, which was granted, would be a useless and unnecessary thing.

It is therefore submitted that the application for the Writ herein requested should be granted.

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